

# Revolt and Reform in South Asia

## Ghadar Movement to 9/11 and After

RADHA D'SOUZA

The Ghadar movement holds the clues to unravelling two paradoxes of modern India. First, India remains a constitutional democracy even when authoritarianism is embedded in the architecture of the state. The second paradox is that internationally India is a model for “democratic-development” even though the country has regressed into an abyss of poverty, dispossession, internal strife, ecological precariousness, rising fundamentalisms and militarism since Independence. The Ghadar centenary year is an opportune moment to reflect on the constitutive nature of the rebellion-repression-reform cycles that is formative of the Indian state and Constitution.

### 1 Introduction

If the dictum “victors write history” is true then the victorious national elites in south Asia’s freedom struggles have indeed successfully written out the extraordinary significance of the Ghadar movement for state-building and constitutionalism, at best paying tributes to their heroism and martyrdom.<sup>1</sup> The interplay of the revolutionary and reformist strands in the independence movement has, at least since the Great Ghadar of 1857, played a constitutive role in state-building and constitutionalism in modern India. The constitutive and contingent character of the two strands creates two paradoxes of modern India. First, India remains a constitutional democracy even when authoritarianism is embedded in the architecture of the state. The second paradox is that internationally India is a model for “democratic-development” even though the country has regressed into an abyss of poverty, dispossession, internal strife, ecological precariousness, rising fundamentalisms and militarism since Independence. The Ghadar movement I argue holds the clues to unravelling the two paradoxes of modern India. In order to unravel the paradox it is necessary to locate the movement and its significance in a sociological account of constitutional developments which underpin state formation and institutions. The Ghadar centenary year is an opportune moment to reflect on the constitutive nature of the rebellion-repression-reform cycles that is formative of the Indian state and constitution.

At the turn of the 20th century, the empire which appeared invincible started to implode. The Ghadarites intervened in the openings that the historical moment provided. Today the American “New World Order”, which appeared rock solid in the post-world war era is imploding before our eyes. The end of the cold war and the “9/11” events have reopened the wounds everywhere: in the mandate territories,<sup>2</sup> in Africa,<sup>3</sup> internal strife in the bastions of the empire,<sup>4</sup> fractured pan-Islamic movements that invoke memories of pan-Islamic, pan-Arab, Hijrat, Khilafat and other resistance movements among Muslim communities everywhere in the first half of the 20th century, extraordinary levels of agrarian crises throughout the third world, resurgence of racism and immigrant bashing in the first world and structural economic crises in Euro-American countries. The present conjuncture is a good moment to revisit the Ghadarites’ responses to similar issues during the historic meltdown a century ago.

There are a number of excellent publications on the Ghadar movement.<sup>5</sup> It is not necessary to traverse the same grounds

Radha D'Souza ([R.Dsouza1@westminster.ac.uk](mailto:R.Dsouza1@westminster.ac.uk)) is with the School of Law, University of Westminster.

here again. Instead, I draw on those historical accounts to reflect on the four themes that engaged the Ghadarites to reflect on the insights they offer in understanding contemporary problems. Section 2 addresses the international dimensions of Ghadar interventions on race and class (s 2.1) and internationalism (s 2.2). Section 3 addresses the national dimensions of Ghadar legacy for the constitutional developments on nationhood and federalism (s 3.1) and devolution and democracy (s 3.2).

## 2 Ghadar Movement: The International Dimension

### 2.1 Race and Class

As I write, the UK Home Office has launched a “go home or face arrest” campaign targeting immigrants,<sup>6</sup> newspapers report workers in Qatar die because of slave-like conditions at construction sites ahead of the World Cup in 2022,<sup>7</sup> in Mexico the Permanent People’s Tribunal has begun hearings on forced displacement and migrations within Latin America and outside. The G-8 economies rely heavily on cheap migrant labour. In Canada, the number of migrants in unskilled jobs increased from 24,000 in 2000 to 88,000 in 2010. Most of them are poorly paid, racially discriminated against and subject to changing and uncertain immigration laws.<sup>8</sup> In 2010 the British Equalities and Human Rights Commission found that in the meat processing industry, there was “widespread mistreatment and exploitation”. A fifth of the workers interviewed reported physical abuse.<sup>9</sup> Immigration from the third world countries including south Asia, to America, Canada, UK and European Union (EU) is a politically divisive issue in these countries.

At the extreme end of the spectrum the responses to discrimination and ill-treatment of migrants call for an end to all immigration laws and border controls.<sup>10</sup> Their ultimate focus on the law means the “middle” in the spectrum of migrant struggles settles around demands for law reforms within the constitutional and legal framework of Euro-American states in some form, most commonly demands for improved anti-discrimination laws, fairer citizenship and settlement laws, extension of civil liberties and access to justice, humane treatment of immigrants by employers and border control agencies, and fair wages. The institution of the state remains the axis of rights. The causes of international migrations remain opaque.

The Ghadar movement was shaped first and foremost by race and class discrimination in North America. The early pre-Ghadar immigrants were typically from central Punjab, peasants, ex-soldiers and predominantly Sikhs followed by Muslims. Their decision to migrate was prompted by the agrarian crisis in the Punjab, much like today, and motivated by the possibility of earning a living. They faced racism and economic exploitation in North America. In 1909, when there was an economic downturn in the US, the American labour unions attacked the Sikh workers, often in connivance with the police. How did the Ghadarites respond to their ill-treatment in North America?

At a time when there was no single strongly-defined ideology, south Asians everywhere turned to the Great Ghadar of 1857 for inspiration.<sup>11</sup> In the early stages of the movement the peasants and soldiers-turned-workers in America combined

the peasant’s love for land, the soldiers’ ability to fight and egalitarian and humanist philosophical traditions in south Asia for guidance. Their location in North America brought them in contact with other oppressed peasant-migrants from Ireland, Russia and elsewhere. The Ghadarites saw their own experiences of race and class and those of other immigrants around them as a problem arising from the subjugation of their homelands by colonial powers. Migrants were ill-treated because their *watans* (homelands) were colonised. The dignity of people anywhere was contingent on the dignity of their *watans*. *Qwams* (people/nations) without *watans* were orphaned people wandering without roots. Only a free India as an equal amongst a community of states could guarantee freedom from racism and classism for her people in the world at large. This understanding prompted them to seek out other Indian nationalists who had migrated to North America and Europe on the one hand and other immigrant movements like the Irish Fenians and Russian Narodniks who were, like them, displaced peasants, on the other.<sup>12</sup> Their ability to make the connections between their mistreatment as immigrants and the colonisation of their homeland prompted them to undertake their epic journeys to return home to India and fight for freedom from imperial rule.

When the Ghadar Party was formed in 1913 there were 10,000 south Asians in North America. Today there are around 3.5 million people of south Asian descent in the US and a further 7,15,000 in Canada, a majority of them from India. While there are many south Asians in prominent positions in North American institutions (as in the British empire), the vast majority constitute the migrant workforce in the service and industrial sectors there. It is astonishing to see the extent to which the struggles of migrant peoples against racism in the imperialist countries today are delinked from the conditions in their home countries. While much attention is given to “rights of migrants” however broadly defined, movements that connect those struggles to the conditions in their home countries that impelled them to migrate in the first place are yet to emerge.<sup>13</sup>

This missing link exists notwithstanding the extensive critique of and widespread scepticism about the policies of global economic actors like the World Trade Organisation (WTO), the World Bank, the International Monetary Fund (IMF), the EU, the G-8 and similar coalitions, the bilateral and multilateral treaties responsible for agrarian crisis in the third world and unsustainable levels of unemployment, the anti-globalisation movements and the rise of the so-called global civil society. The demands for rights of migrants in the capitalist countries reify the credibility of the states and the liberal legal order on which they are founded. At the same time they discredit the third world states for their failure to address social and political distress caused by the global neocolonial political economy. In part at least this is because there is a cognitive dissonance in contemporary understandings of the institutional architecture of imperial power in the post-world wars era: the combinations of “soft” and “hard” power and the economic, social, cultural, political, military and ideological aspects of governance of post-world wars capitalism and imperialism.<sup>14</sup>

The crises of capitalism and imperialism in the early 20th century revealed the institutional architecture of power in the empire systems, the reality that empires are founded on migrant, indentured and slave labour. The new wave of “immigrant-bashing” in the wake of the current economic crisis is once again a reminder that empires continue to be founded on cheap (neo)colonial labour. The Ghadarites could see their race and class oppression in the global framework of colonialism and imperialism. It was the memory of the Great Ghadar of 1857, however, that enabled them to make the connections with the revolutionary traditions in their own past.

The defeat of the Great Ghadar notwithstanding, Britain was forced to give concessions to Indians. A series of law reforms promised to end discrimination and unfair treatment.<sup>15</sup> By the turn of the 20th century it was clear that the law reforms or “promises of the British rulers” as the Ghadar literatures refer to them had failed at best and were false at worst. They turned away from law reforms and sought inspiration from the revolutionary strand in Indian history. “Globalisation” has buried any hopes there might have been about “democratic-development” in India and the third world. The “war on terror” has buried hopes of a rule-based international order founded on sovereign equality of states.<sup>16</sup> Does the Ghadar movement offer insights into how race and class issues in the G-8 capitalist states and the anti-globalisation movements in India may be linked? An answer to this question invites a closer examination of the international character and scope of imperial governance. Ghadar internationalism demonstrates their grasp of the architecture of imperial power.

## 2.2 Internationalism

The Ghadar movement was perhaps the first real internationalist movement anywhere in the world. The vision of the Ghadarites was always international even though they themselves returned to India from North America to participate in the freedom struggle. They believed that India should be free and so must Egypt, Turkey, Persia, Malaysia, China and every other colonised nation. The networks of the Ghadarites extended to Vancouver, Astoria, Portland, San Francisco, New York, Mexico City, Panama, Rio de Janeiro, Rosario, Buenos Aires, London, Paris, Berlin, Moscow, Istanbul, Kabul, Tashkent, Shiraz, Ferozepur, Lahore, Amritsar, Jullundar, Meerut, Rangoon, Singapore, Hankow, Manila, Shanghai, Tokyo, Nairobi and more.<sup>17</sup> Within the US, they were connected with all types of radical struggles – the Irish Fenians, the Norodniks, Mexican, Chinese and Egyptian nationalists. They linked with the Khilafat movement in the Muslim world when Britain and France disbanded the Ottoman empire, and the growing communist movements in Russia and her colonies. Their international network may astonish many today but it becomes comprehensible when we see the breadth and scope of the British empire against which they organised.

When the Ghadar movement emerged at the turn of the century the Second International (1889-1914) was the most organised internationalist movement with a socialist outlook. The outreach of the Second International was limited to Europe and parts of Russia. National liberation and colonialism

confounded early European socialists. This was notwithstanding the fact that at the turn of the 20th century there were vibrant nationalist groups from the colonies organising in Europe in support of Independence of their home countries.<sup>18</sup> The victory of the Russian Revolution in 1917 meant that the national liberation struggles in the Russian empire could no longer remain a theoretical question on the primacy of class vs nation. Britain actively mobilised Russian nationalities against the nascent socialist government. An internationally isolated socialist state needed allies but so did the national liberation movements repressed and persecuted by imperial powers. In 1920 the Third Communist International, popularly known as the Comintern (1918-1943), for the first time recognised the importance of anti-colonial movements of the east for the socialist movement and included them in the agenda of their work at their second congress.<sup>19</sup> The Ghadar movement in contrast was the first major anti-imperialist network of colonised peoples. The Ghadarites played an important role in drawing the attention of the Russian revolutionaries to the importance of the national liberation movements in the east beyond the Russian empire. The scope of the Ghadar movement stretched across the British empire. Arguably it was more international than the Euro-American socialist internationals.

Writing in 1917 Lenin argued in the *State and Revolution* that revolutionary socialists must grasp the architecture of state power and “smash the bureaucratic-military machine”, a lesson European revolutionaries must learn from the inspirational but unsuccessful Paris Commune. For the anti-colonial movements their own colonial state was just one cog in the wheel of the empire machine. The architecture of power was not limited to the British or French or Spanish state but located in the “bureaucratic-military machine” of the empire internationally. This architecture of power called for something beyond the unity of working people within their own countries. It called for “smashing” the nodes of bureaucratic-military power across the empire. Thus India cannot be free if Egypt, China, Kenya and other colonised nations were not free. The empire’s military machine was, like its plantations, farms and mines, “manned” by colonised subjects. In the British empire, Irish troops were used to rule India and Indian troops were deployed throughout the empire. Likewise in the bureaucratic machine of the empire British residents were appointed to Indian princely states as agents of the crown while Indians were appointed as agents in Shiraz, Muscat, Kuwait and many other parts of the empire.<sup>20</sup> In their political work the Ghadarites put considerable energy into organising the Indian troops, exhorting them not to allow the British colonialists to use them to subjugate other nations and turn instead to freeing their own nation.<sup>21</sup> Indeed without colonial labour, colonial troops and colonial administrators colonialism itself is impossible.

I want to suggest that the architecture of imperial power in the post-world wars order is mired in fractured discourses about particular aspects of the world order such that we see the cogs, large and small, but not the machinery they keep in motion. The fractured discourses produce a general feeling of disaffection with contemporary forms of imperialism. The causes of

disaffection remain to be fleshed out and supported by theoretical understandings of the global bureaucratic-economic-military order that can inform political practices and opposition to the order.<sup>22</sup> A number of dualisms, reductionisms, conflation and ahistorical understandings of diverse aspects of the international order is at least one reason that keeps contemporary movements in the third world from seeing “the bureaucratic-military machine” of the post-world war imperialism.

Some of these analytical lenses include: (i) conflation of formal juridical aspects of the state in international law and the real institutional differences between capitalist and colonial states in the distribution of power within international organisations;<sup>23</sup> (ii) the location of economic, political, military and ideological power in particular nodes of international organisations;<sup>24</sup> (iii) the concentrations of institutional and military power within international organisations in imperial states;<sup>25</sup> and (iv) the unity of capitalist states (G-8 + international organisations) on the one hand and the role of “hard” and “soft” power in fostering, maintaining and policing ethnic, religious, and sectarian divisions among third world peoples on the other.<sup>26</sup>

Undoubtedly, the reasons for the analytical confusions about the post-world wars order lie deeper. What is possible to say is that since the late 1980s the coalescing of the so-called Washington Consensus against third world states, the erasure of the structural imprints of the socialist and anti-colonial struggles in the international institutional order since the end of the cold war, the neo-liberalisation of international organisations led by the WTO, and the “global war on terror” have lifted the lid on the real nature of imperialism in the era of monopoly-finance capitalism and brought to the fore all the contradictions suppressed during the intervening years after the world wars. Closer examination of each conflagration in the third world, which is well documented in critical academic scholarship in numerous disciplines, reveals the return of the repressed histories in each case. What is missing in the present conjuncture is third world internationalism of the type fostered by the Ghadar movement.<sup>27</sup> The dislocation of problems of contemporary India from the wider international context has sealed-off the analysis of problems of India within the confines of the Indian state as an insulated legal container in the international order. Equally, international organisations under the United Nations promote a brand of international cosmopolitanism that social movements in the first and third world alike have come to rely on as a form of surrogate internationalism. The Ghadar movement challenges us to reconceptualise third world internationalism in the present context of “globalisation” and the “global war on terror”.

### 3 A United States of India?

#### 3.1 Nationhood and Federalism

The Ghadarites envisioned an *azad* India as *United States of India* formed as a federation of the multiple *qwams* (peoples) that shared India as their *watan*, a historically constituted homeland which was violated by imperialist Britain.<sup>28</sup>

Who constitutes a nation in the hyphenated nation-state? This question in the modern sense emerged in the wake of

European modernisation against a feudal order in the 18th and 19th centuries. The nation state is first and foremost a juridical entity that presupposes certain types of institutions. The juridical entity we recognise as the modern nation state is founded on philosophical concepts in jurisprudence about sovereignty, nationality, institutions of governance, secularism, theories of recognition and legitimacy. These jurisprudential concepts developed in political opposition to pre-existing sources of European law in Christian theology about divine rights, the authority of the Catholic Church over Christian nations, and recognition by the Vatican as source of legitimacy. The Enlightenment was a comprehensive intellectual programme that challenged the church in philosophy, political theory and law.<sup>29</sup> Through a series of abstractions from European realities intellectuals arrived at grand legal theories of republicanism, constitutionalism (separation of powers, rule of law, popular sovereignty and parliamentary democracy), secularism, legal formalism (positive law) and popular democracy as the basis of recognition and legitimacy. Slogans such as “liberty, equality and fraternity” in politics formed the basis for membership of institutions of the state following from citizenship. Citizenship as membership of the state and its institutions substituted ties to place and homeland to become the basis for a secular nationhood in the hyphenated nation-state. These legal developments embedded capitalism as a comprehensive social system beyond commodity production in the economic sphere. Science and constitutionalism replaced theology and divine law.<sup>30</sup>

In contrast, in the colonies comparable abstractions from the realities of colonial world were not possible because of very different historical trajectories of modernisation introduced through external forces of colonialism.<sup>31</sup> Anti-colonial movements were forced to squeeze existing socio-historical formations into borrowed concepts about nationhood, sovereignty, secularism and democracy that did not quite fit. The process of state formation by incorporating diverse communities, castes, gender-roles, occupational, religious and ethnic groups into institutions of the colonial state had already begun. New interest groups emerged and new roles for existing groups created new political realities that the anti-colonial movements had to reckon with. Civic/ethnic and national/ethno-national binaries reduced nationhood to one of many aspects of reality.<sup>32</sup>

The influence of political ideology of European nation-states meant that national liberation movements gave primacy to one amongst several aspects of social life, e.g., religion, ethnicity, language, race, tribes, ancestry, history, customary practices in defining nationhood. Alternately they reduced society to its economic aspects articulated in ideas of modernisation, secularism and liberal constitutionalism. Definitions of nationhood were informed by the potential for unifying largest sections of society against colonial rule. Against the Ottoman empire, for example, Islam could not be a unifying factor. Instead pan-Arab regionalism provided a common bond however tenuous.<sup>33</sup> In Algeria in contrast, against French rule, Islam could be a unifying factor in the context of assimilationist French republicanism.<sup>34</sup>

The sheer diversity of south Asia presents, now as then, definitional challenges. Not only is the Indian subcontinent home

to a number of religions, races, ethnicities, linguistic groups, castes, customary practices and such, they combine in very local ways. The combinations of class, caste, religion, language, race, and other aspects vary widely from locality to locality as do the premodern economies of land, water and forest entitlements.<sup>35</sup> Privileging any single aspect of social life, or reducing nationhood to any one aspect of society, could, potentially, destroy the possibility of a broad based anti-colonial struggle.

Secular, constitutional democracies of the European type presuppose the primacy of economic life over all other aspects of social life as the basis of nationhood. Emerging from the Hundred Years' War (1337-1453) and the Thirty Years' War (1616-1648) and in opposition to the Catholic Church and theocracy, democracy took particular forms in European modernisation mediated by the rise of capitalism amidst the breakdown of the feudal order. In contrast, in the colonies the economy was reorganised by colonialism causing economic, ecological, social and political trauma for local communities. The presupposition of a shared economy as the basis for nationhood could not unite all sections of society against the colonial powers. Nor could society be reduced to any one or a selected few of its aspects: caste, class, race, religion, language, whatever, as the basis for nationhood. Unlike pan-Arabism or pan-Islamism, pan-Indianism necessitated a basis of unity that articulated aspirations for freedom and at the same time remained non-reductive unity in diversity.

The concept of *azadi* as a federation of many *qwams* united by their *watans* dominates Ghadar discourses and practices. This conception of free India was revolutionary for its times. It is radically different from what later came to dominate radical/critical/Marxist debates in the subcontinent as the "nationality question" on the one hand and the quasi-federalism of the south Asian nation states on the other. Quasi-federalism inherited institutions of the colonial state and economy from the British and bypassed the subjugation of nationalities- *qwams*- the specific modes of national oppression within the empire by imperialism.<sup>36</sup>

In the United States of America, the early home of the Ghadar movement, federalism developed from unification of diverse states formed through colonial settlements and occupations. The Ghadarites were aware of the injustices of the US on her first nations. Federalism in the US was driven primarily by the common economic interests of settler-colonialists. The Ghadarites took the concept of republican federalism from the US but adapted it to the British empire in the subcontinent by making Indian social realities the basis for unity. Implicit in their actions was the understanding that the basis for unity must be a shared *watan* (homeland) irreducible to the juridical form of a constitutional state or to any single sociological category such as religion, race, caste and others.

A nation state of the European kind founded on liberal constitutionalism presupposed the reduction of homeland to landed property as commodity in the private domain on the one hand. On the other it presupposed reduction of homeland to notional/virtual territoriality symbolised by the juridical concept of citizenship in the public domain. European modernisation incorporated land markets that transformed land into a saleable

commodity and displaced property-less people into economic and political institutions as corporate and natural citizens in the service of economy and nation state.<sup>37</sup> In the colonial context such as India a nation state of the European kind entailed transforming relations between multiple *qwams* and their *watans* into one between individual citizens and a constitutional state on the one hand and into property rights and entitlements on the other. It entailed a historical rupture executed through law and state with ties of people to land. This rupture in the colonial context is mediated not by national capitalism but by colonialism and imperialism.<sup>38</sup>

The rupture of ties between land and people mediated by international finance and investments and executed by international law has continued throughout the post-Independence and post-world war era in India. For example, the recent Right to Fair Compensation and Transparency in Land Acquisitions, Rehabilitation and Resettlement Act, 2013 introduces neo-liberal variations of the colonial Land Acquisitions Act 1883 for appropriation of land and the displacement of people but nevertheless continues the process of transforming relations between land and people, between *watan* and *qwams*, into landless, placeless citizens in a nation state. Each advance in this process has created social upheavals. Underlying events such as the Telangana armed struggle, the north-east and Kashmir "problems", the Naxalbari, Srikakulam and other "uprisings", the Bodo, Gurkha and Assam "troubles" and the ongoing insurgency in central India there are competing conceptions of land-people relations and resistances to the transformation of *qwams* affiliated to *watans* into citizens with equal opportunities in the economy.

Citizenship requires affiliation to the state and the law and not to place or people. Freedom without ties to peoples and places would have been unthinkable for the Ghadarites. The "imagined India" of postcolonial scholarship<sup>39</sup> remains unthinkable for many rural and indigenous communities and nationality groups even today. For them the nation means *people-in-places*. The fact that Ghadarite literatures use Urdu and Punjabi words such as *qwan* and *watan* even when writing in English cannot be entirely accidental. It suggests dissatisfaction with the English political vocabulary. Their understanding of United States of India as a union of *qwams* willing to defend their *watans* becomes apparent when we consider their positions on two intractable questions in contemporary Indian politics: Kashmir and centre-state relations.

### 3.1.1 Ghadarites on Kashmir

On returning to India one of the first political priorities for the Ghadarites was to liberate Kashmir by 1925.<sup>40</sup> The Ghadarites saw the people of Kashmir as the most impoverished peasants in the subcontinent who were *also* Muslims. The people of Kashmir combined the attributes of being impoverished peasants plus being Muslim plus longing for freedom of their *watan* irreducible to any one of these attributes. In contrast their oppressors were landed feudal lords plus Hindu plus pro-British irreducible to any one of these attributes.

In other parts of the subcontinent the combinations of class-nationality-ties to empire varied. In the state of Hyderabad, for

example, the rulers were pro-British Muslims-feudal aristocrats and the people were impoverished tribal/lower caste Hindus and anti-imperialist. In Bengal, like in Kashmir, the peasants were impoverished Muslims and anti-British, while the landlords were Hindus under direct British rule with nationalist aspirations. The people of Punjab, Muslims and Sikhs had a special responsibility in the freedom struggle because they formed the backbone of the British army which was deployed to subjugate people of the subcontinent and throughout the empire.<sup>41</sup> The focal point for unity was always the unity of *qwams* in defence of their *watans* as they existed in society and in reality.

In contrast to the Ghadarite vision of a United States of India as a union of many *qwams* affiliated to the *watan*, the reformist strand in the freedom struggle envisioned India as a nation state founded on liberal constitutionalism following in the European traditions. For the reformist nationalists an independent India was first and foremost an economic union, a quasi-unitary state with concentrations of economic power in the central government.<sup>42</sup> Viewed through the binary lenses of civic/ethnic nationhood the people of Kashmir had to be reduced to peasants with affiliation to land and therefore “backward” and an impediment to economic modernisation; or to Kashmiris as bearers of *Kashmiriyat*, a distinct culture sundered from economic or political autonomy; or Muslims, followers of a religious ideology sundered from culture and homeland. The Kashmiri – Muslim – anti-imperialist – peasant oppressed by the Kashmiri – Hindu – pro-imperialist – landlords must now be recast as either Kashmiri or Muslim or peasant but not a combination of all three. Whatever the reductionist category that is used to view the so-called “Kashmir problem”, the people of Kashmir risk being branded “traitor” or “terrorist” sans their *watan* or a disembodied land-hungry peasant without religion or culture.

At a deeper level the Ghadar conceptualisation presupposes unity of land and people, a unity sundered by nation states everywhere by modernity.<sup>43</sup> The ruptured relations between people and places are replaced in modernisation by the symbolic affiliation to land envisaged in citizenship within the constitutional framework of the nation state. The Ghadarites never accepted that relations between people and places could be sundered or become symbolic/virtual unity. In this sense the Ghadar movement remains the most consistently anti-imperialist movement of our times. It challenged the very foundations of European capitalism beyond India's Independence.

### 3.1.2 Democratic Federalism

The Ghadar approaches to Kashmir and their idea of independence as a union of free states presuppose an understanding of India that existed before the emergence of international law and international organisations that instituted statehood as a universal phenomenon in the middle of the 20th century.<sup>44</sup> Precolonial India had an embedded tradition that recognised popular rebellions as a corrective to excesses of rulers. In a highly decentralised economy and society power and legitimacy could not flow from a divine source passed down through hierarchical institutions. Other worldly sources established a normative order that included both kings and subjects. Rebellions

were the means to depose kings who violated the normative order. Rebellions were acceptable if their purpose was to restore justice and well being of society. Popular rebellions replaced individuals at the helm and did not institutionalise new forms of power and interests (which was decentralised anyway).<sup>45</sup> Far from being disobedience to god and king as in the western tradition, rebellions were necessary to restore society to its normative anchor when the norms were violated.<sup>46</sup>

The East India Company's treaties of subsidiary with the Indian princes expanded spectacularly after 1764.<sup>47</sup> Subsidiarity subverted the checks and balances in Indian society against misrule and oppression. The subsidiary agreements provided military protection to the princes in return for commercial and trading concessions to the East India Company. The protection was not limited to external threats and included internal rebellions against misrule. Deposing before the Parliamentary Select Committee on the Affairs of the East India Company in 1832 on the effects of the subsidiary treaties on governance in India William M'Culloch the chief examiner of the East India Company was asked about the effect of the subsidiary treaties on governance. M'Culloch quoting from Sir Thomas Munro's letter written in 1817 argued:

There are many weighty objections to the employment of subsidiary force. [...] The usual remedy of a bad government in India is a quiet revolution in the palace, or a violent one by rebellion or foreign conquest; but the presence of a British force cuts off every chance of remedy, by supporting the prince on the throne against every foreign and domestic enemy. It renders him indolent, by teaching him to trust to strangers for his security, and cruel and avaricious, by showing him that he has nothing to fear from the hatred of his subject. Whenever the subsidiary system is introduced, unless the reigning prince be a man of great abilities, the country will soon bear the marks of it in decaying villages and decreasing population.<sup>48</sup>

James Mill's evidence was in the same vein.<sup>49</sup> The subsidiary treaties transformed rebellions from being a social corrective against excesses of rulers into the modern “class-war” where peasants and soldiers must perforce wage war against the state to seize power and transform it. Regardless, peasant rebellions and sepoy revolts continued throughout the East India Company's rule and later British rule in British India as well as the princely states.<sup>50</sup> The princely states were the bedrock of the quintessential peasant rebellions of India.<sup>51</sup> In the early 20th century the Ghadarites were active in many peasant revolts in the princely states, in particular the state of Nabha in the present Punjab and the Vindhyaachal regions. The legal status of the princely states as quasi-sovereign states nevertheless provided the revolutionary nationalists with organising spaces. Repression in the princely states was less intense as British interference was mired in legal and political sensitivities.<sup>52</sup>

Indian troops formed a large contingent estimated between 1 million and 1.6 million men in the first world war and around 1 million men in the second world war.<sup>53</sup> The vast majority of the troops were from the princely states under the subsidiary agreements. For the Ghadarites the soldiers were prime recruits for the freedom struggle.<sup>54</sup> Much later Ghadarites like Rash Behari Bose organised the prisoners of war and expatriate Indians into the Indian National Army against the British

which was later led by the prominent nationalist Subhash Chandra Bose.<sup>55</sup>

Indeed, there is a historical continuity in the tradition of rebellions throughout the post-Independence era as evidenced by the Telangana, Naxalbari, Sriakulam movements, the struggles in central India today and many more. Far from correcting the normative order of society as in precolonial India, contemporary rebellions invite bloody repression in the Anglo-colonial tradition. The Ghadar movement stands out as an example of the extraordinary state violence against claims for justice and equity, a trend that continues in the state led “counter-insurgencies” today. If we recall that the Ghadarites drew their inspiration and their conceptualisation from the Great Ghadar of 1857 – a revolt led by soldiers and peasants that shook the East India Company rule to its foundations – it becomes possible to understand their attempts to straddle the Indian and the modern and the conjunctive uses of the modern vocabulary of federalism and republicanism alongside south Asian vocabulary of *qwams* and *watans*.

The immediate causes of the Great Ghadar of 1857 were the widespread uses of the legal doctrine of lapse by the East India Company bureaucracy in India.<sup>56</sup> The Great Ghadar ended with the liquidation of the East India Company and the take-over of its “assets” by the crown. The Queen’s Proclamation of 1858 promised fair and equal treatment to the Indian people and an end to the policy of annexations to the princes. The crown could not live up to its promises however. The failure of law reforms led to renewed Indian opposition from 1870 onwards. Going over the interplay of principles in jurisprudence and politics underscores the Ghadarites’ deep scepticism about English law even when conceding the possibilities of adapting English law in creative ways as the US had done with the principles of federalism and republicanism. This scepticism is in stark contrast to the extraordinary thrall in which the reformists held British law.

For the Ghadarites the *watan* was always the basis for unity against imperialist oppression. The *watan* was never a juridical entity, a virtual territory guaranteed by citizenship, but *real* lands where *real* communities could live as such. The unity of people-in-places was irreducible to the nation state as the basis for freedom. The United States of India must, the Ghadarites insisted, be based on Indian realities while being open to intellectual horizons and political theories elsewhere.

In retrospect neither the secular, economic civic-nationalism of India nor religious, linguistic ethno-nationalism of Pakistan and Bangladesh succeeded in hemming-in a vast and diverse subcontinent into the straitjacket of nation states. Reducing nations to religion created Pakistan, then reducing it to language created Bangladesh, further reducing it to “backward regions” produces the Balauchi, Sindhi, North-Eastern, Tamil and similar “problems” that manifest as ethnic conflicts in south Asia. In the post-world war era global capital acting under international organisations and alliances of capital like the G-8 has exacerbated questions like Kashmir. Within India economic development, the basis for secular nationalism, has produced and sustained demands for statehood and cession that in turn justify repression.

Equally, political opposition by the states to the concentrations of economic power in the federal government in the Indian Constitution puts stresses on the quasi-federal structure of the Indian state. Since the late 1960s at least a unified central government has become increasingly impossible. In turn a politically weak centre with concentrations of economic power has pushed the central government to seek legitimacy from international organisations and G-8 states by collaborating in the neo-liberal transformations of the economy and political collaboration on the “war on terror”. In the light of the trajectory of these developments in the subcontinent of the Partition, repartition and conflicts between religious, linguistic, ethnic and other groups, it is useful to revisit the Ghadarites’ application of political categories such as federalism, state and nations to the realities of the subcontinent and their ideas about *azad* India as a federation of *qwams* affiliated to the subcontinent as their *watans*.

### 3.2 Devolution and Democracy

#### 3.2.1 Dialectic of Rebellion-Repression-Reform

The processes through which the formal attributes of democracy together with authoritarian police powers came to be embedded in structures of the Indian state can be tracked along two related trajectories: (i) rebellion and repression; and (ii) repression and reform. The repression-reform dialectic is constitutive of the administrative and institutional infrastructure of the state through a series of constitutional developments. The colonial/imperial substance of reforms continued to spawn rebellions that unravelled the administrative and institutional goals and entrenched the authoritarian features of the Constitution.<sup>57</sup>

British engagement with the reformist strand in the nationalist movement was prompted by the sweep of the revolutionary strand in the freedom struggle set in motion by the Ghadar movement. In the aftermath of the Great Ghadar in 1857 the British government was confronted with a serious administrative crisis. Conservatives and liberals in Britain argued about the administrative reforms in India. Both agreed that some form of power-sharing with sections of Indian society was necessary if Britain were to keep India within the empire. Both were unanimous in the need to avert another revolutionary war. The differences, often bitter, centred on which sections of Indian society were Britain’s most dependable allies. The arguments over administrative reforms under Lords Lytton, Ripon and Dufferin after the 1870s were about identifying dependable allies.

The test of dependability was the stances of the Indian social classes towards popular resistance on the one hand and faith in British law and institutions on the other. The conservatives under Lord Lytton favoured “the princes, the chiefs and the landlords” and “British senior services” including civil and military “because [...] they could influence and lead the inert peasant millions and thus could ensure the success of the imperial mission.”<sup>58</sup> The liberals under Lord Ripon in contrast favoured cultivating “the small class of highly educated natives” who were “mature, competent, moderate and loyal and possessed legitimate ambitions and aspirations that were in keeping with their education and with the pledges that they had

heard repeated in Parliament for over 50 years”.<sup>59</sup> The controversies over administration of India in the aftermath of the Great Ghadar of 1857 produced a mode of engagement with India that may be described as the “collaboration-confrontation model” where against popular resistance to British rule the nationalist elite collaborated and on questions of power sharing there was confrontation between them. This mode of engagement continued to provide the blueprint for the rebellion-repression-reform dialectic in the freedom struggle until 1950 when the Constitution was adopted.

The Government of India Act 1858, the first constitutional statute, established a state without a nation. The promises of the Queen’s Proclamation of 1858 dissipated quickly. From 1877 onwards British policies took a sharp turn towards repression.<sup>60</sup> The Vernacular Press Act 1878 curtailed freedoms of the vernacular press and was seen as more repressive than the Irish Coercion Act 1870. The vernacular press had become critical of British policies in India notably against the Second Afghan War which was paid for from Indian revenues and the import duties levied on Indian cotton to placate the Lancashire textile lobby.<sup>61</sup> The Arms Act 1878 prohibited Indians from carrying arms. It placated the conservatives but unified the resistance movements. By the end of the Lytton era India was on the brink of another revolution.<sup>62</sup> The Arms Act was repealed by Lord Lytton’s successor Lord Ripon in 1881. Reforms by Lytton’s successor Lord Ripon produced outrage, this time from British industrialists and plantation owners for perceived appeasement of the Indians.<sup>63</sup>

Independent India made the Arms Act more stringent than what Lords Lytton-Ripon-Dufferin could have imagined possible and it continues to be widely used in the country. The Arms Act is an important feature of the complex of police powers constitutive of the Indian state today. In the context of post-1857 crisis of administration Lord A O Hume, a close confidant of Lord Ripon, became an active organiser of the Indian National Congress with a view to include the “educated classes” in administration of the country. The party he was instrumental in shaping continues to rule, it championed the “build-big” policies of the post-Independence era, and put India firmly under the institutional power of international economic organisations like the World Bank, IMF and G-8 powers and transnational corporations and later the liberalisation-privatisation-globalisation policies.

Equally, the engagement for power sharing with the princes/landowners and aristocrats by British conservatives to address the aftermath of 1857 produced questions about how the power would be shared between Hindu and Muslim landowners and aristocrats, the ruling elite in British India.<sup>64</sup> It introduced the Hindu-Muslim divide in the elitist nationalist politics that eventually led to Partition of the subcontinent and perpetual tensions between the states of India and Pakistan. Ironically Hume was a prominent British military leader in the 1857 war in the region of Oudh, the heartland of the Great Ghadar where Hindus and Muslims together challenged the foundations of the East India Company rule. After retirement from a war in which he fought Hindu and Muslim “landowners,

aristocrats, peasants and soldiers”, Hume became a champion of the “educated classes” in India.

The rebellion-repression-reform dialectic in the princely states is significant for two reasons. First, it produced the legal and institutional tools for indirect rule and (neo)colonialism in the New World Order after the end of second world war.<sup>65</sup> Second, it prepared the constitutional pathway to a unified India after 1947. Before the Parliamentary Select Committee in 1832 James Mill was emphatic that the princely states should be integrated into British India and should be allowed to survive for a period “as short as you can conveniently”.<sup>66</sup> Integration as a political project backfired badly and led to the Great Ghadar in 1857. The integration project that the East India Company desired in 1832 was realised after Independence in 1949.

The Queen’s Proclamation ended the policy of annexation but not the paramountcy. Instead, focus shifted to developing legal principles of indirect rule. These principles involved departures from constitutional ideas that were at the heart of the European revolutions. The most sacred of them was the idea that sovereignty was an indivisible and inalienable principle that vested in people. Sir Henry Maine the architect of colonial law and law member of the governor-general’s executive from 1862-69 argued that sovereignty was divisible after all!<sup>67</sup> The principles were followed up with a series of institutional developments such as the chamber of princes that provided for consultative mechanisms for governance of divided sovereignties.<sup>68</sup> International law after second world war universalised and institutionalised divided sovereignties over economic and sociopolitical dimensions of nation states.<sup>69</sup>

The foundations of the administrative and institutional infrastructure for the collaboration-confrontation model of engagement in the rebellion-reform dialectic in the subcontinent were laid in years after the Great Ghadar but entrenched constitutionally in the years following the repression of the Ghadar movement in 1914. Below I discuss the anti-terrorism laws and devolution of powers as two constitutive processes that entrenched the rebellion-repression-reform features constitutive of statehood in India.

### 3.2.2 Anti-Terrorism Laws: Entrenching Authoritarianism

Turning first to repressive state powers, when the Ghadarites returned to India most notably after the *Komagata Maru* stand-off in British Columbia in 1914, first world war broke out. General O’Dwyer promulgated the Punjab Ordinance of 1914 which conferred arbitrary powers of arrest and detention of anyone perceived to be a threat to state security. What is interesting in retrospect is that the Punjab Ordinance exempted the application of ordinary criminal law to a class of people classified by the state as “security risk”.<sup>70</sup> Sir O’Dwyer the architect of the first “anti-terrorism law” in the subcontinent was of the view that the trials of revolutionaries should not drag on by “ingenuity of counsel” by committal and appeal procedures which ordinary criminal law provided.<sup>71</sup> Under the Punjab Ordinance of 1914 the police could initiate trials if their investigations disclosed prima facie case. Trials were to be heard by a tribunal of three judges applying ordinary rules of evidence but without appeal.<sup>72</sup> By the

time the Terrorist and Disruptive Activities Act 1985 (TADA 1985) was passed the idea that ordinary criminal law could be dispensed with in cases of “disruptive” activities against the state was firmly embedded in the architecture of state power in India.

The trial of Ghadarites introduced sedition and conspiracy as a specialised branch of criminal law first developed in the Lahore and Mandalay conspiracy cases. Sedition laws continue to be used to this day.<sup>73</sup> TADA 1985 took summary trial procedures much further by changing one of the most fundamental rules of liberal democracy: the rule of presumption of innocence. It shifted the burden of proving innocence on the accused.<sup>74</sup> This is fast-forwarding 71 years. I wish to return to 1914 to pick up the threads of anti-terrorism laws, (il)liberal democracy and state formation in India.

The Defence of India Act 1915 extended the Punjab Ordinance 1914 to all of British India. After unification of India, completed by 1949, sedition laws and extraordinary executive police powers were extended to people living in the 565 princely states in the subcontinent at the time. The unification of India expanded the extraordinary executive police powers geographically to those parts of India that were not under direct British rule.

The Defence of India Act 1915 provided for punishment of village officers and villagers colluding with or assisting revolutionaries. Since 1914 the idea that an entire population can be punished for anti-state activities by individuals and groups has been entrenched in the architecture of Indian democracy. Necessarily summarising the broad oeuvre of legal developments relating to collective punishment since 1915, the Defence of India Act 1915 was made more stringent by the Defence of India Act 1939 and the Defence of India Ordinance of 1941. Again the ordinance was justified as a temporary war-time measure during the second world war. In the wake of the resurgence in the nationalist movement during the world wars the Armed Forces (Special Powers) Ordinance 1942 was promulgated.<sup>75</sup> The 1942 Ordinance gave executive powers to the government to declare any area as a “disturbed area”. Once notified as a disturbed area it gave the state the powers to deploy the army against entire populations in the notified areas. The Ordinance was used in Bengal, Assam and the United Provinces from 1942 onwards until after Independence when it was adopted as the Armed Forces (Special Powers) Act 1948 as a temporary measure to deal with the Partition violence. The statute continued until 1957 much after the Partition. It was put permanently on the statute books in 1958 and used initially in the north-eastern states and later extended to Punjab and Kashmir.<sup>76</sup> The point to note is that the power remains available on the statute books to be used anywhere in India by a simple executive notification. The idea that the population of an entire area can be punished perverts every grain in the repertoire of liberal democracy. Liberal democracy rests on the idea that it is the individual who is always the subject of law.

### Deployment of Army

After Independence the Indian army has been deployed for three purposes: (i) against the citizens of India (as the colonial state did); (ii) as part of UN troops deployed in different parts of the world (as the Indian army was deployed in the colonial era);

and (iii) against Pakistan, a state born from the collaboration-confrontation model of imperial governance of the subcontinent following the constitutional reforms during the Lytton-Ripon-Dufferin era in 1877.

The Defence of India Act 1939 linked internal and external security seamlessly and remains embedded as a feature of the legal machinery. The Defence of India Ordinance 1941, the Ordinance of 1946, the Defence of India Act 1962, Defence of India Act 1971 and the Defence and Internal Security of India Rules, 1971 provide seamless continuity in the apparatuses of Indian state between internal and external security and pre- and post Independence governance. Article 22 of the Constitution embedded preventive detention in the constitutional framework with safeguards. The Constituent Assembly debates during the framing of the Constitution from 1947 to 1950 justified Article 22 as a necessary measure in the wake of Partition violence. The Preventive Detention Act 1950 regularised preventive detention as a permanent feature on the statute books. The 15th and 16th constitutional amendments in 1963 did away with the provision that extraordinary executive police law could only be temporary measures. The amendments allow permanent statutes expanding use of extraordinary executive police powers against citizens. The Unlawful Activities Prevention Act (UAPA), 1963 was put permanently on the statute books giving the executive powers to curtail the right to organise, assemble and express political opposition to the state.

The Maintenance of Internal Security Act (MISA) 1971 was introduced preceding the national Emergency in 1975. It was seen as a draconian measure specifically directed at internal dissent in the country. During the Emergency in May 1975 fundamental rights and freedoms under the Constitution were suspended altogether. After the Emergency was lifted due to popular opposition, MISA was repealed in 1977. It was replaced with the draconian TADA 1985. TADA 1985 lapsed in 1995, again, due to popular opposition and was replaced by the Prevention of Terrorism Act (POTA) 2002<sup>77</sup> which was once again repealed in 2004 after a general election where repeal of the statute had become an important election issue. The point to note is that the successive amendments to the Constitution embedded the power to introduce and expand repressive laws against citizens and arbitrary executive powers at the structural level.<sup>78</sup>

Turning to the sources of law, international law replaces English law as the source of recent anti-terrorism law in India. Since the events of “9/11” international law is the direct source of anti-terrorism laws in India. Barely had the ink dried on the repeal of the POTA in 2004 when the UAPA Amendment Act 2004 was enacted to give effect to the UN Security Council Resolution 1373 requiring states to give effect to anti-terrorism laws within their jurisdictions. The amendments to UAPA 2008 consolidate and incorporate UN Security Council Resolutions 1267 (1999), 1333 (2000), 1363 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1735 (2006) and 1822 (2008) into domestic law.

Invoking international law to suppress domestic dissent aligns India to the “axis of good” in the “global war on terror” internationally and normalises repression within India. The

global war on terror and UN resolutions against terrorism obfuscate the reality that barring dominant militarist states like the US or North Atlantic Treaty Organisation (NATO) powers, the global war on terror is fought, must necessarily be fought, in the former colonies and semi-colonies, within their own territorial and constitutional jurisdictions against their own peoples. The anti-terrorism laws and each one of the aforesaid statutes and amendments have been widely debated in India and public opposition is articulated through protests, legal challenges and electoral politics. However in the absence of an internationalist outlook a concerted anti-imperialist critique of anti-terrorism laws that links the domestic with the international regimes of repression remains opaque and on the fringes of critique, if it exists at all.

The Ghadarites in contrast grasped the legal and institutional architecture of power clearly. For the Ghadarites imperialism and colonialism were first and foremost global in its outreach and underpinned by police powers within India and the empire. They were able, therefore, to locate their own opposition within the empire system nationally and internationally. Independence has mystified the nexus between imperialism and law, a nexus that was crystal clear during colonial rule. It remains to be deconstructed in the UN era. The ongoing global war on terror provides an opportunity to reflect on the Ghadarites' grasp of the linkages between national and international dimensions of Empire and the relevance of their understandings for India today.

### 3.2.3 Constitutionalism and Devolution of Power

The repression-reform trajectory of constitutional developments runs parallel to the rebellion-repression trajectory. The binary framing of the story of India's Independence as a struggle between the British and the Indians writes out the collaboration between the British and Indian elites in the repression of revolutionaries. The persistence of the revolutionary strand gave the reformist leadership the leverage to bargain for greater devolution.<sup>79</sup> The dominant narrative of India's Independence as a peaceful transfer of power in India and in Britain conceals the extraordinary violence that underpinned independence.<sup>80</sup>

After the Ghadar movement was put down brutally the revolutionary upsurge continued until the trials and sentencing of the Indian National Army veterans after the end of the second world war. A spate of mutinies continued and culminated in the Royal Indian Navy (RIN) mutiny in 1946.<sup>81</sup> Speaking to the British House of Commons Prime Minister Clement Atlee at least was clear about the real reasons for granting independence to India:

Britain is transferring power due to the fact that (1) The Indian mercenary army is no longer loyal to Britain; and (2) Britain cannot afford to have a large British Army to hold down India.<sup>82</sup>

It was the reality of the revolutionary strand in the freedom struggle that forced the Indian National Congress and the Muslim League to negotiate transfer of power with Britain. The revolutionary upsurge did not subside after the Ghadar movement was put down. The influence of the Ghadarites was profound even after Independence. Indeed one Ghadar veteran, Baba Bujha Singh, who formed the Ghadar Party in Argentina

in 1934, endorsed the Naxalbari uprising in the late 1960s and was extrajudicially killed (encounter killing) in 1970 by the Indian police when he was nearly 80 years old.<sup>83</sup> The pre- and post-1947 rupture in India's contemporary historiography is, I wish to argue, ideological. It makes a fetish of independence, a fetish that makes it difficult for ordinary Indians to understand their conditions today and connect the past with the present.

The repression-reform cycles can be tracked along the trajectory of devolution of power to the "educated classes" beginning with the Indian Councils Act 1909 and ending with the linguistic reorganisation of states in 1956. The key moments in the devolution of power to India were the Indian Councils Act 1909 (after the partition of Bengal in 1905 and suppression of the militant swaraj movement), the Government of India Act 1919 (after the suppression of the Ghadar movement), the Government of India Act 1935 (after the Simon Commission which triggered another wave of revolutionary upsurge), the Indian Independence Act 1947 (after the RIN mutiny), the States Reorganisation Act 1956 (after nationwide protests for reorganisation of states on linguistic basis). The series of constitutional changes from 1909 to 1956 erected the edifice of the Indian state that exists today. Each statute created institutions that embed the paradox of the Indian state we see today: it is simultaneously authoritarian and democratic. Each step in devolution entrenched a particular mode of engagement with state and society. Each constitutional statute was prompted by the need for reforms in response to rebellions and aimed at engaging the elites to keep India within Britain's, and later Anglo-American sphere of influence.

Neither the "princes, the chiefs and the landlords" nor the "educated classes" could contain the resurgence of popular struggles for freedom or erase the memory of the Great Ghadar. The partition of Bengal in 1905 gave rise to round two of the freedom struggle, the swaraj movement in Bengal. The Ghadar movement located overseas at the time forged links between radical nationalists who were abroad, often to escape repression in India, to form pan-south Asian and international alliances for independence. The Indian Councils Act 1909 accompanied the execution and trials of swaraj nationalists. The Act of 1909 for the first time included Indians in the Viceroy's ruling council. The Act of 1909 instituted separate Muslim electorates within the framework of the Indian state. The Act was the precursor to the communal electorates in 1919, the Communal Award of the Labour Party in 1932 with quotas for Muslims, Hindus, and caste-based electorates; and the Radcliffe Award under the Labour Government that partitioned India in 1947. After Independence it institutionalised the politics of minorities within India and the geopolitics of India-Pakistan relations in international relations in south Asia that continues to this day. The Indian Councils Act of 1909 introduced limited elections at provincial levels with communal representations while the Viceroy governed in council with nominated members at the centre. Nevertheless it is important to note that since the Act of 1909 virtually no decision, political or legal, were made in India or about India without the involvement of Indians whether of the "princes, the chiefs and the landlords" type or the "educated classes" type.

More importantly it must be restated with some emphasis that the search for “reliable allies” which produced the Hindu-Muslim rivalries vis-à-vis the British did not dent the popular anti-colonial movements at least until the 1940s.<sup>84</sup> The demand for an independent state for the Muslims of the subcontinent was made formally for the first time in 1940 via the Lahore Resolution.<sup>85</sup> From being a strategy for political bargaining, Partition became a reality when in 1946 Jawaharlal Nehru, later India’s first prime minister, rejected a broad-based federation with considerable autonomy for provinces as proposed in the plan for independence known as the Cabinet Mission Plan. After that, the Partition was an exercise in haste. Within five weeks a large subcontinent with a long history came to be carved up into two nations.<sup>86</sup> The Ghadar vision of a federal United States of India for all nationalities as the only possible basis for a democratic state stands in sharp contrast to the devolution negotiations that divided both watan and qwams to create two modern nation states. The devolved nation states remain a source of perpetual ethnic tensions. In retrospect suppression of the Ghadar movement was a necessary condition for Partition.<sup>87</sup> In this the Indian Hindu elite, the Muslim elite and the British administration worked in concert. All this is fast forwarding again.

### Gandhi’s Interest

To return to 1909, Gandhi’s interest in India’s freedom struggle, it is useful to recall, was kindled by the Indian revolutionaries in Britain. Gandhi visited London to lobby the British Parliament on behalf of Indian immigrants in South Africa in 1909 where he lived. During his visit Madan Lal Dhingra, an Indian nationalist studying in England, was executed in London in 1909 for “terrorist offences”. Gandhi was forced to debate the militant nationalists during his stay in London.<sup>88</sup> On his way back to South Africa he wrote the famous pamphlet *Hind Swaraj*, a classic text in which he expounded his views on Indian independence for the first time. After the Ghadar revolt of 1914 hundreds of revolutionary nationalists were executed in India, Singapore and elsewhere. Thousands were banished to Rangoon, a penal colony at the time or shipped to Africa.<sup>89</sup>

Gandhi arrived in India from South Africa in 1915 and remained there as the de facto “chief negotiator” of Indian independence and the public face of India’s freedom struggle for the world at large. Annie Besant, the British theosophist, Fabian socialist, and suffragist also came to India about the same time. Besant’s reasons for moving to India were:

To disentangle the national extremists from their compromising alliance with the revolutionaries, to reconcile them to a position within the Empire and to bring them in line with the Moderates within the United Congress.<sup>90</sup>

Besant became the chief campaigner for the Home Rule movement in India.<sup>91</sup>

However, the Ghadar movement torpedoed the Morley-Minto reforms on which the 1909 Act was based and forced the state to return to repressive measures.<sup>92</sup> The big difference was that this time around the repression had the signatures of “educated Indians”. The Revolutionary and Anarchical Crimes

Act 1919, or Rowlatt Act which became part of folk history because of its use in the Jallianwallah Bagh massacre had the concurrence of the Indian “educated classes”.<sup>93</sup> The “educated classes” on the whole condemned the revolutionary nationalists and at the same time acted as mediators using the revolutionary movements to negotiate for greater devolution of powers to Indians. <sup>94</sup> Confronted by the “Punjab Unrest” as it came to be known, the Indian National Congress and Muslim League arrived at an “entente” in 1916 to jointly negotiate the terms of the next round of constitutional reforms.<sup>95</sup> The Revolutionary and Anarchical Crimes Act 1919 came hand in hand with the next constitutional reform statute, the Government of India Act 1919.

The 1919 constitutional reform introduced dyarchy. Dyarchy was a dual system of government that gave the provincial legislative councils limited self-governance in relation to some subjects and reserved subjects of importance to Britain for the viceroy-in-council at the centre. Dyarchy laid the foundations for a strange type of federal-state division of powers that continue to characterise law, state and politics in India to this day. Subjects of interest to Britain and India’s place in the empire remained with the central government and the viceroy-in-council while social and cultural subjects devolved to elected provincial governments. The constitutional reforms in India during the world wars enabled seamless integration of India into the post-world war institutions by substituting the UN and International Economic Organisations for the empire and the imperial preference trading system.<sup>96</sup> The concentration of economic powers and the modern economy in the hands of the centre and devolution of political and social responsibilities to the states, the basis for which was laid in 1919, continues to be a source of tensions in centre-state relations to this day.<sup>97</sup>

Since 1977 when the national Emergency was lifted, regional political parties have emerged as dominant players in electoral politics impelling coalition governments at the centre. In turn a weak central government has turned to international organisations and G-8 states for legitimacy and support. The seamless transition to neoliberal agenda in India was made possible because of the characteristics of the Indian state, an institution that came to be embedded in Indian society through the constitutional reforms of 1909, 1919 and 1935.<sup>98</sup> International treaties continue to be the conduit for pushing through domestic legislation that usurps powers of the states.<sup>99</sup> The trajectory of representative politics initiated under the 1909 Act continued in the 1919 Act. The trajectory includes the warped federalism as well as the warped democracy in the form of communal electorates. The constitutional reforms of 1919 extended communal electorates beyond Muslims to Christians, Sikhs and other groups and institutionalised the politics of minorities. These developments stand in stark contrast to the Ghadar visions of federalism as United States of India comprising many qwams.

To put the trajectory of devolution into perspective, something bigger was happening to capitalism and imperialism at that time.<sup>100</sup> The agrarian crisis in India was triggered by the wider collapse of agricultural prices internationally after the first world war. Britain was vulnerable economically and drained by the first world war. The US pressured Britain to end the imperial

preference trading system and grant greater access to Indian markets. India as the regional node for Britain's war efforts saw industrial expansion in India. Indian industries and industrial houses benefited from Britain's war production.<sup>101</sup> These developments created a new confidence in the Indian elite to push for greater devolution after the failure of the Rowlatt Act to contain the revolutionary upsurge.

The parliamentary commission appointed to review the constitutional reforms of 1919 in 1929, popularly known as the Simon Commission, did not include any Indians. Big sections of the "educated classes" and their main voices, the Indian National Congress and the Muslim League protested their non-inclusion. It gave the freedom movement an added impetus. While these developments are familiar stories of contemporary historiography it is pertinent to note that the Indian members of the provincial legislative councils created under the 1919 reforms supported the work of the Simon Commission. The viceroy nominated several Indians to the All-India Committee for Cooperation with the Simon Commission established by the Council of India headed by the governor general.<sup>102</sup> Notwithstanding nationwide protests, the Simon Commission's recommendations for constitutional reforms went ahead. It produced a series of consultations with diverse sections of the elite nationalist leadership. Britain convened three Round Table conferences between 1930 and 1932. The Congress and Muslim League who had opposed the Simon Commission for excluding Indians nevertheless participated in the Round Table conferences which it recommended.

The Round Table conferences excluded the revolutionaries altogether, the strand of the freedom struggle that had significant popular support. The negotiations took place in London away from the scrutiny of mass movements in India and against the backdrop of a series of repressive measures that is embedded in folk history of the freedom struggle to this day. Notable events include: (i) police violence during protests against the Simon Commission visit to Lahore in 1928 that killed Lala Lajpat Rai, a Ghadar associate; (ii) a spate of incidents throughout the country leading to promulgation of national emergency in 1930 discussed above; (iii) an ordinance setting up special tribunals for trials of revolutionaries; (iv) the trials and convictions of people who continue to remain legends of the freedom struggle to most ordinary Indians today such as Bhagat Singh, Satguru and Azad; (v) the formation of the Hindustan Republican Army, later the Hindustan Socialist Republican Army; and (vi) international diplomacy to snuff out the efforts of the Ghadarites in order to rally the support of Germany, Turkey and Japan against British rule in India.

In retrospect the Round Table conferences set a precedent for a particular mode of state-citizen engagement that continues to this day, i.e., the "confrontation-collaboration" model. Repression against people is used to resolve political problems on the one hand and on the other normative discourses mobilise the "educated classes" that appears as democracy to the world. The collaboration-confrontation model of engagement with political issues underpins the coexistence of authoritarian and democratic features that are characteristic of the Indian state.

The Government of India Act 1935 laid the foundations for constitutionalism after Independence. Summarising briefly, the highlights of the Act were: (i) greater provincial autonomy but limited to social and local subjects; subjects of importance to the modern economy and Britain remained with the central government; (ii) independent princely states were persuaded to join a larger union of India by offering representations in the constitutional arrangements; a project that was realised only after Independence in 1949; (iii) partial reorganisation of provinces, a project that was completed after Independence under the States Reorganisation Act 1956 when the devolution project was completed;<sup>103</sup> (iv) Burma was detached from India entirely and Aden separated from India as an independent Crown colony, feeding into the reorganisations underway internationally at that time; (v) direct elections to provincial legislatures; and (vi) establishment of a federal court which later became the Supreme Court of India after Independence. The 1935 Act formed the basis for the republican constitution after independence. Very little was changed in the structure of the constitutional Act of 1935. The people involved in the Round Table negotiations were also members of the Constituent Assembly that drafted the republican constitution.

The trajectory of constitutional developments leading up to constitutionalism challenges us to interrogate the British vs Indian binaries in the events leading up to Independence on the one hand. On the other it challenges us to question the rupture between pre- and post-Independence narratives of law, state, economy and society. Indeed in the retelling of the Ghadar history above the fast-forwarding and rewinding is not difficult to do if 15 August 1947 does not become a moment of rupture for historiography. This continuity I wish to emphasise is important to understand the paradox of authoritarianism and democracy in contemporary India.

#### 4 Conclusions

The Ghadarites never theorised their vision of *azadi*. Yet, the Ghadar interventions demonstrate that the vision of nationhood and democracy for India was a contested one. The significance of the Ghadar movement is much more than heroism and courage which undoubtedly it is. The Ghadar movement attempted to straddle the Indian with the modern at a critical juncture in history before modernity became the dominant lens for envisioning free India. Second, the rise and repression of the Ghadar movement was constitutive of state formation and constitutionalism that emerged after Independence. Third, the issues raised by the Ghadar movement remain unresolved to this day. The federal structure and centre-state relations, the nationalities questions, democracy and repression and land question continue to fester. The significance of the Ghadar movement becomes apparent when we see in retrospect how their articulation of the basis for nationhood and democracy differed from the reformist strands in the freedom struggle. Indeed the interplay of the revolutionary and reformist strands in the freedom struggle in south Asia, their constitutive and contingent character, create the two paradoxes that characterise contemporary India referred to in the introduction.

The Ghadar movement at the turn of the century provided the freedom struggle with historical continuity by reviving memories of the first Great Ghadar of 1857, the failures of political reforms after 1857 and by shifting the focus of freedom back to peoples and places away from legal formalisms and administrative reforms. At the same time it brought to the Indian subcontinent the tides of resistances elsewhere in the empire and linked the Indian aspirations for freedom to other peoples and places around the world. The erasure of the memory of the Ghadar movement and its significance for the creation of the constitutional state and modern institutions ruptures the threads that connect the past to the present in contemporary Indian society. For example, repressive laws in India are not state exceptionalism in constitutional theory but remain embedded as a constitutive feature of state and democracy.

Devolution of power was not the consequence of a rupture during the moment of Independence but rather the culmination of under a century of constitutional developments.

The near absence of sociolegal and sociological analysis of the Constitution means the contested social processes through which the state was constituted remains opaque. Evgeny Pashukanis, the noted Marxist legal scholar, argued that normative accounts of law in jurisprudence must run close to the surface of sociology of law to grasp the ways in which the law, state and society intertwine in producing the reality experienced by people.<sup>104</sup> The Indian experience challenges liberal theories of constitutionalism and nationalism and calls for innovative theoretical lenses grounded in the geo-historical experiences of colonial societies.<sup>105</sup> Whether a renewed Indian sociology of law will rise up to this challenge remains a moot question.

## NOTES

- 1 The year 2013 is the centenary year of the formation of the Ghadar Party. The year 2014 is the centenary year of the Komagata Maru rebellion in British Columbia. This article is dedicated to the memory of all those who fought and died to uphold a truly Indian vision of free India, a vision that remains relevant to this day. I want to thank the organisers of Ghadar centenary celebrations in Vancouver and Victoria in Canada and in the UK for inviting me to speak at various commemorative events which have helped me to rethink the imprint that the movement has left on contemporary South Asia.
- 2 E.g. Iraq, Syria, Libya, Palestine, Jordan, Lebanon, Rwanda, Burundi, Ghana and Papua New Guinea.
- 3 E.g. Somalia, Kenya, Congo, Ivory Coast, Central African Republic, Sudan, amongst others.
- 4 E.g. Egypt, India, Turkey, Algeria.
- 5 The Ghadar movement began as a movement of migrants from the Indian subcontinent in the west coast of California in the United States and Vancouver in Canada in the early 1900s. The Ghadar Party was formed in 1913 in North America. The facts about the leaders and their political activities are fairly consistent. Scholars have emphasised different aspects of their work. For a nuanced history based on rich archival material that brings to life the characters and the wider political environment within which the movement developed see Miah Ramnath, *Haj to Utopia: How the Ghadar Movement Charted Global Radicalism and Attempted to Overthrow the British Empire* (Berkeley, Los Angeles, London: University of California Press), 2011; for history of the Ghadar Party, see Dr Gurdev Singh Deol, *The Role of the Ghadar Party in the National Movement* (Delhi: Jullundur: Sterling Publishers (P) Ltd), 1969; other histories include Randhir Singh *The Ghadar Heroes: Forgotten Story of the Punjab Revolutionaries of 1914-15* (Bombay: Peoples Publishing House), 1945; Harish K Puri, *Ghadar Movement: Ideology Organisation & Strategy* (Amritsar: Guru Nanakdev University Press), 1983; G Adhikari (ed.), *Baba Sohan Singh Bhakna, Life of the Founder of the Ghadar Party* by Sohan Singh Josh (New Delhi: People's Publishing House), 1979; Sohan Singh Josh, *Hindustan Ghadar Party: A Short History* (New Delhi: People's Publishing House), 1977-1978; Savitri Sawhney, *I Shall Never Ask for Pardon: A Memoir of Pandurang Khankhoje* (New Delhi: Penguin Books); Tilak Raj Sareen, *Selected Documents of the Ghadar Party* (Delhi:

- Mounto), 1969; Khushwant Singh and Satindra Singh, *Ghadar 1915: Indian's First Armed Revolution* (Delhi: R K Publishing), 1966; Malini Sood, *Ghadar Party in North America* (New York: Garland Publisher), 2000; Nahar Singh and Kirpal Singh, *Struggle for Free Hindustan* (Ghadar Movement in 3 vols) (New Delhi: Atlantic Publishers & Distributors), 1986; Malini Sood, *Expatriate Nationalism and Ethnic Radicalism: The Ghadar Party in North America* (Garland Publishing, Incorporated), 2000; Khushwant Singh, Satindra Singh, *Ghadar, 1915: India's First Armed Revolution* (New Delhi: R & K Publishing House), 1966; The Report of the Sedition Committee 1918 Presided by Justice Rowlatt (Calcutta: Government Printing, India), 1918 provides information from the government's standpoint. This is by no means an exhaustive list of the literature.
- 6 "Home Office Vans Telling Illegal Immigrants to 'Go Home' Investigated by Advertising Watchdog after 60 Complaints", *Daily Mail*, London, 9 August 2013.
- 7 "Qatar World Cup 'Slaves': Fifa's UK Representative 'Appalled and Disturbed'", *The Guardian*, London, 26 September 2013.
- 8 For e.g., see Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers' Insecurity* (Toronto: Metclaff Foundation), September 2010.
- 9 Felicity Lawrence and Karen McVeigh, *The Guardian*, London, 13 March 2010.
- 10 Movements like "No One Is Illegal" a loose campaign network in Europe and North American organising on migrant issues critique, and correctly, the socio-economic arguments against migrants and often argue for ending border controls. See <http://www.noii.org.uk/> (in Britain) and <http://www.nooneisillegal.org/> (Canada). See also, Justin Akers Chacon and Mike Davies, *No One Is Illegal: Fighting Racism and State Violence on the US-Mexico Border* (Chicago: Haymarket Books), 2006.
- 11 Indeed many of the leaders of the movement grew up in the shadows of the aftermath of the Great Ghadar. For e.g., Muhammad Barakatullah was born in 1859, Obeidullah Sindhi in 1872, Lala Hardayal, Tarakanth Das, Sadashiv Khankhoje in 1884. See M Ramnath, 2011, n 6.
- 12 Ramath, M 2011, n 6.
- 13 Successive generations of migrations and settlements from south Asia spanning a century have created a social class of diaspora who play a particular role in the global architecture of "soft" and "hard" power in the post-war era. Their position in the social relations of capitalism and imperialism is complex and less understood

- by radical movements for social change. The new immigrants from third world states in contrast are impelled to migrate because of the fallout in their home states from contemporary policies of international organisations and capitalist states encapsulated in "globalisation" and the "war on terror".
- 14 Radha D'Souza, "A Fleeting Moment in Times of Cognitive Dissonance", Foreword and introductory essay to N Malathy, *A Fleeting Moment in My Country: The Last Years of the LTTE De facto State* (Atlanta: GA: Clarity Press), 2012, pp 13-23.
- 15 For e.g., the much hated East India Company and its "company sarkar" was dissolved. The Queen's Proclamation of 1858 promised non-discrimination in the civil services and access to education. The Factories Acts of 1881, 1891 promised improved working conditions in factories, the Inland Emigration Act, 1882 and Madras Plantation Labour Act, 1903 promised safeguards for indentured labour from labour contractors.
- 16 Cf Trevor Purvis, "Looking for Life Signs in an International Rule of Law" in Amy Bartholomew (ed.), *Empire's Law: The American Imperial Project And the 'War to Remake the World'* (New Delhi: Orient Longman), 2006, pp 110-36.
- 17 Ramnath, M 2011, n 6.
- 18 E.g., the Ghadar movement in North America, the Berlin India Committee in Germany, the India House in Britain, the Egypt National Party in France, the Mexican and Irish nationalists in the US, to name just a few. Many individuals were known to the Second International socialists, e.g., Madame Cama in Berlin, M N Roy was known in Spartacist circles, the Ghadarites were active participants in the Industrial Workers of the World (Wobblies) in the US Nationalists were arrested and sometimes executed in Europe, for example, Madan Lal Dhingra was executed in London in 1909.
- 19 For the different positions taken by the right, centrist and the left within the First, Second and Third Internationals on different issues see Merle Fainsod, *Interntional Socialism and the World War* (New York: Otagon Books, Inc) 1966.
- 20 For agents in Arabia and Persia, see Onley, James, "Britain's Native Agents in Arabia and Persia in the Nineteenth Century", *Comparative Studies of South Asia and Middle East*, 24:1, 2004, pp 129-37.
- 21 E.g., G S Deol, 1969, n 6 at p 135, 149; Ramnath, M 2011, n 6 at pp 121-22.
- 22 For example, the establishment of the International Criminal Court was widely supported

- by NGOs and social movements in the third world believing their corrupt politicians could be brought to account. A decade later we find that all prosecutions by the ICC are against African political figures. See Solomon Dersso, "Opinion: The International Criminal Court's Africa Problem: All Cases Launched So Far by the ICC Involve Africans, Throwing into Question the Court's 'International' Nature", *al Jazeera*, 11 June 2013, accessed from <http://www.aljazeera.com/indepth/opinion/2013/06/201369851918549.html>. The point I wish to make is that it is not enough to make a sweeping statement that everything is an imperialist game. Rather it is important to locate the setting up of the ICC within the architecture of power in post world war order.
- 23 R D'Souza, "Imperialism and Self Determination: Revisiting the Nexus in Lenin", *Economic & Political Weekly*, XLVIII:15, 13 April 2013, pp 60-69.
  - 24 For e.g., the Security Council privileges the five veto powers, the International Economic Organisations privilege five largest capital contributing countries; the regional organisations under ECOSOC like ESCAP that engages states in the economic agenda of the International Economic Organisations; DESA and HRC engage states on development and human rights respectively. See R D'Souza, 2013, n 24.
  - 25 For e.g., the politics of NATO and UN peace-keeping missions – south Asia (India, Pakistan and Bangladesh) together continue to provide the largest contingent of troops for UN peace-keeping operations worldwide as they did under the empire, ironically one may add, deployed in the same "hot spots" as they were during colonial rule. They comprise the lower rungs on the peacekeeping troops while at the helm political and military decisions remain with imperialist powers. See Kabilan Krishnasamy, "Recognition" for Third World Peacekeepers: India and Pakistan", *International Peacekeeping*, 8:4, 2001, pp 56-76.
  - 26 See M Mamdani, *Saviors and Survivors: Darfur, Politics and the War on Terror*, Verso, 2009; also R D'Souza, 2012, n 15.
  - 27 Several third world anti-globalisation movements recognise the need to understand economic and military dimensions of contemporary imperialism. Their orientation towards reforming the UN system has stalled attempts to deconstruct the "bureaucratic-military" machine of contemporary imperialism. See for e.g., statement from the Asia-Pacific Research Network conference on "Bandung in the 21st Century: Continuing the Struggle for Independence, Peace against Imperialist War and Globalization", 14-16 April 2005 in Bandung Indonesia by Tujan Jr Antonio titled *Bandung in the 21st Century, Greater Challenges Against Imperialist Globalization and War*, <http://aprn.net.org/index.php/conferences-a-workshop/43-bandung-in-the-21st-century/197-bandung-in-the-21st-century-greater-challenges-against-imperialist-globalization-and-war>
  - 28 Cf M Ramnath 2011, n 6 at pp 97, 119-22. The significance of the use of words *watan* and *qam* lies in the concepts they carry and the ways in which those concepts differ from the categories of nationalism and patriotism in contemporary discourses on nationalism in English. Modern meanings of *qam* and *watan* in Ottoman language groups differ widely in the Arab world, the Maghreb, Ottoman Turkey, Persia, central Asia and south Asia. Depending on their positions within different empires, anti-colonial movements at the turn of the century, envisioned statehood and nationhood in different ways. The specific locations of nationalities within empires infused modernisation of the two terms with new meanings. For the different meanings and the context in which the language of nationalism and patriotism developed, see E Van Donzel, B Lewis and Ch Pellat, "Qam and Qwamiya" in *The Encyclopaedia of Islam*, Vol IV (Leiden, E J Brill), 1978, pp 780-94; P J Bearman, Th Bianquis, C E Bosworth, E van Donzel and P Heinrichs, "Watan and Wataniyya" in *The Encyclopaedia of Islam*, Vol XI (Leiden, Brill), 2002, pp 174-77. I have intentionally used both terms along with their English equivalents which is roughly, but only roughly nationalities/peoples and homeland/affiliation to place.
  - 29 See Zygmunt Bauman, *Legislators and Interpreters: On Modernity, Post-modernity and Intellectuals* (Cambridge, UK: Polity Press), 1987.
  - 30 See Z Bauman, 1987, n 30.
  - 31 See Radha D'Souza, "Imperial Agendas, Global Solidarities and Socio-legal Scholarship on the Third World: Methodological Reflections", *Osgoode Hall Law Journal*, No 49 (3): 2012, pp 6-43. Also, Alavi, Hamza and Theodor Shanin (ed.), *Introduction to Sociology of 'Developing Societies'* (London: Macmillan), 1982.
  - 32 Amir Hassanpour discusses the framing of nationalism using binaries such as civic/ethnic or national/ethno-nation in the context of Kurdish liberation struggles. See Amir Hassanpour, *Ferment and Fetters in the Study of Kurdish Nationalism* (MRzine, 24 August 2008, accessed from <http://mrzine.monthlyreview.org/2008/hassanpour241108.html>). The binary framings occurred everywhere. It could be argued that partly at least the universal appearance of binary framings have to do with the necessity of squeezing geo-historical realities into a particular juridical form of statehood; and further that the binary framings produce the swings between what Geertz calls "Epochalism" and "Essentialism" captured in the politics of nationalism and democracy. See Clifford Geertz, *The Interpretations of Cultures: Selected Essays* (Hammersmith, London, UK: Fontana Press), 1993 [1973].
  - 33 See the distinctly different evolution of meanings of the concept of *qam* into the modern "qwamiya" in response to anti-colonial nationalisms in different parts of the Islamic world in Arabia, Maghreb, Turkey, Persia and South Asia discussed in E Donzel et al, 1978; P J Bearman et al, 2002, n 29.
  - 34 See note 29 above.
  - 35 Sayings in local languages like *har chaar kos me pani badle, aath kos mey bani* – water changes every four kos (a unit for measuring distance varying from 1-5 km depending on the region) and language changes every eight kos, articulate the extent of diversity of Indian society even in precolonial times.
  - 36 For an account of the incorporation of communities within global political economy, see Amy L Chua (1995), "The Privatization-Nationalization Cycle: The Link between Markets and Ethnicity In Developing Countries", *Columbia Law Review*, 95, March, pp 223-303.
  - 37 Karl Polanyi provides an in-depth account of how this happened in Britain in Karl Polanyi, *The Great Transformation* (Beacon Hill, Boston: Boston Beacon Press), 1957.
  - 38 See R D'Souza, 2012, n 32; also R D'Souza, 2013, n 24.
  - 39 See for e.g., Ronald B Inden, *Imagining India* (Oxford: Blackwell), 1990.
  - 40 G S Deol, 1969, n 6.
  - 41 See Syed H S Soherwordi, "Punjabisation" in *The British Indian Army 1857-1947 and the Advent of Military Rule in Pakistan*, Edinburgh Papers in South Asian Studies Number 24, 2010, [www.csas.ed.ac.uk](http://www.csas.ed.ac.uk)
  - 42 Hence, the dogged refusal of the Indian National Congress to share power with the Muslim League.
  - 43 In the words of Karl Marx (*Grundrisse: Foundations of the Critique of Political Economy* (Rough Draft) (London: Penguin Books), 1993 [1973], p 276: [...]) the land of its excess mouths, tears the children of the earth from the breast on which they were raised, and thus transforms labour on the soil itself, which appears by its very nature as a direct wellspring of subsistence, into a mediated source of subsistence, a source purely dependent on social relations [...] [as] relations posited by society, not as determined by nature.
  - 44 R D'Souza, 2013, n 24.
  - 45 J P S Uberoi argues that the Indian counter-Enlightenment from Kabir onwards was "not at all preoccupied with transfer of power or the protection of tradition but rather with the recovery and affirmation of self-rule and self-reform in culture as well as power located in civil society. The material premise for this intellectual and cultural articulation was a generally recognised approval of rebellion when power and tradition become excessive or oppressive in a decentralised political economy". J P S Uberoi, 2002, *The European Modernity: Science, Truth and Method* (New Delhi: Oxford University Press), 2002, p ix.
  - 46 See Radha D'Souza, "What Can Activist Scholars Learn from Rumi", *Philosophy East and West*, 64:1, 2014, pp 1-24.
  - 47 See M H Fisher, "Indirect Rule in the British Empire: The Foundations of the Residency System in India (1764-1858)", *Modern Asian Studies*, 18, 1984, pp 393-428.
  - 48 *Minutes of Evidence Taken Before the Select Committee of the House of Commons on the Affairs of the East-India Company, February 28th to July 9th, 1832 VI Political or Foreign* (London: Printed by the Honourable Court of Directors by J L Cox and Son), 1833, at p 1.
  - 49 James Mill's evidence: "The substance of the engagement we make with these princes is this: we take their military protection upon ourselves, and the military power of the state into our own hands. Having taken from them the military powers of the government, that is, all the power, we then say to them, We give up to you the whole of the powers of civil government, and will not interfere with you in the exercise of them. It is well known what the consequences are. [...] In the ordinary state of things in India, [...], the princes stood in awe of their subjects. Insurrection against oppression was the general practice of the country. The princes knew that when mismanagement and oppression went to a certain extent, there would be revolt, and that they would stand a chance of being tumbled from their throne, and a successful leader of the insurgents put in their place. This check is, by our interference, totally taken away; for the people know any attempt of theirs would be utterly unavailing against our irresistible power, accordingly no such thought occurs to them, and they submit to every degree of oppression that befalls them," p 8.
  - 50 See evidence of Henry Russel, resident of Hyderabad before the Select Committee hearings on the perpetual fear of mutinies that hung over the East India Company, n 49 at p 20.
  - 51 See Y Vaikuntham, ed., *People's Movements in the 'Princely States'* (Delhi: Manohar), 2004; For Punjab see S Gajrani, *Peasants, Landlords, and Princes, 1920-56* (New Delhi: Rima Pub House), 1994; for Vindhya Pradesh see A U Siddiqi, *Indian Freedom Movement in Princely States of Vindhya Pradesh* (New Delhi: Northern Book Centre), 2004; Siddiqi M H, 1986, "History and Society in a Popular Rebellion: Mewar, 1920-1933", *Comparative Studies in Society and History*, 28, 1986, pp 442-67; R Brara, "Agrarian Unrest in a Princely State of Malerkotla: An Anthropological Analysis", *Indian Anthropologies*, 39: 1-2, 2009, pp 1-16; H Singh,

- "Princely States, Peasant Protests, and Nation – Building in India: The Colonial Mode of Historiography and Subaltern Studies", *Social Movement Studies: Journal of Social, Cultural and Political Protest*, 2:2, 2003, pp 213-28.
- 52 For example Chadrashakar Azad used the Princely state territories around the central provinces in the well-known Kakori case. See A U Siddiqui, 51 at pp 65-68.
- 53 C E DeWitt and S D Pradhan, ed., *India and World War I* (Columbia, Mo: South Asia Books), 1978; J H Voigt, *India in the Second World War: A History with Problems* (Bernard & Graefe Verlag), 1990.
- 54 See n 6 above. Also, M Mukherjee, "World War I and Indian Nationalism: The Ghadar" in Bipan Chandra, Mridula Mukherjee, Aditya Mukherjee, K N Panikkar, Sucheta Mahajan (ed.), *India's Struggle for Independence* (New Delhi: Penguin Books), 1988, pp 146-58.
- 55 C Sundaram, "Indian National Army" in *The Encyclopedia of War*, Blackwell Publishing, 2011.
- 56 The law of lapse in English common law is part of a body of testamentary law governing succession and wills of the estates of property owners. In cases of mismanagement of the estates or incapacity of the beneficiary of a will to receive benefits, or intestacy, the estates lapsed to the Crown. See Erich Tucker Kimbrough, "Lapsing of Testamentary Gifts, Antilapse Statutes, and the Expansion of Uniform Probate Code Antilapse Protection", 36 *William & Mary Law Review*, 1994, p 269. From around 1824 starting with the annexation of Kittur in present day Karnataka, the East India Company began using the doctrine in novel ways in the subcontinent to annex territories of native rulers if they died without heir or were seen as hostile to the Company's interests. From the Company's standpoint the Indian territories were its "property" and governed by private law principles. These "legal" annexations provoked the Great Ghadar of 1857.
- 57 See Radha D'Souza, "The 'Third World' and Socio-legal Studies: Neo-liberalism and Lessons from India's Legal Innovations", *Social & Legal Studies*, No 4:4, 2005, pp 487-513.
- 58 Briton Martin Jr, "Lord Dufferin and the Indian National Congress, 1885-1888", *Journal of British Studies*, 7:1, 1967, pp 68-96 at p 70.
- 59 Briton Martin Jr (1967) n 59 at p 71.
- 60 Lord Lytton appointed as Viceroy in 1877, anointed Queen Victoria as the Empress of India, co-opted Indian princes, landowners and aristocracy and held the famous Delhi Durbar inviting Indian princes to a grand banquet in her honour during the Great Famine from 1876 to 1878 which claimed 16.4 million lives. He also fought the Second Afghan War in the Great Game using revenues from India while the population died from starvation in millions. In 1879 there was an unsuccessful attempt on his life. His reign as Viceroy reignited the revolutionary strands in the freedom struggle. M Lutyens, *The Lyttons in India: An Account of Lord Lytton's Viceroyalty, 1876-1880* (London: John Murray), 1979.
- 61 See n 61, also G S Deol, 1969, n 6 at pp 15-17. It may be noted that Pakistan continues to be at the centre of the Fifth Afghan War as it was in the First, Second, Third and Fourth Afghan wars before partition, and Bt cotton a genetically modified cotton variety produced by Monsanto continues to cause distress to agrarian communities and natures in India and Pakistan.
- 62 G S Deol, 1969, n 6 at pp 15-16.
- 63 The Ilbert Bill 1883 proposed changes to the Criminal Procedure Code by extending equal treatment to British and Indian offenders in criminal cases. Earlier British offenders could not be tried by an Indian jury and could only be tried by the high court.
- 64 Briton Martin Jr (1967) at p 89.
- 65 The significance of Princely States for developments in international law requires more extensive analysis which is not possible within the space of this article. For basic approaches see Legg, Stephen "An International Anomaly? Sovereignty, the League of Nations and India's Princely Geographies", *Journal of Historical Geography*, 30, 2013, pp 1-15; Fiona Groenhout, "The History of the Indian Princely States: Bringing the Puppets Back onto Centre Stage", *History Compass*, 4:4, 2006, pp 629-44.
- 66 Evidence before the Select Committee at n 50.
- 67 Barbara N Ramusack, *Indian Princes and Their States* (Cambridge: Cambridge University Press), 2004 at p 94.
- 68 For a discussion of the reforms proposed by the Indian States Committee, see W S Holdsworth "The Indian States and India", *The Law Quarterly Review*, 184, 1930, pp 407-46; for sovereignty and paramountcy, see Julian Palmer, *Sovereignty and Paramountcy in India* (London: Stevens & Sons), 1930.
- 69 See n 66.
- 70 The resonance of this in contemporary anti-terrorism laws seems self-evident to me.
- 71 Quoted in G S Deol, n 6 at p 160.
- 72 G S Deol, n 6 at ch 13.
- 73 S Narrain, "Disaffection' and the Law: The Chilling Effect of Sedition Laws in India", *Economic & Political Weekly*, Vol XLVI, No 8, 19 February 2011, pp 33-37; also A Kalhan, Gerald P Conroy, M Kaushal, S Miller and J Rakoff, "Colonial Continuities: Human Rights, Terrorism, and Security Laws in India", *Columbia Journal of Asian Law*, 20:1, 2006/07, pp 93-234.
- 74 Commentaries, "Black Law and White Lies: A Report on TADA, 1985-1995", *Economic & Political Weekly*, 30: 18/19, 6-13 May 1995, pp 977-81.
- 75 In retrospect it is a strange quirk of history that the ordinance widely used in "free India" was promulgated on 15 August, which was later on to become Independence Day.
- 76 Amnesty International, "India Briefing on the Armed Forces (Special Powers) Act, 1958" 2005, accessed from <http://www.amnesty.org/en/library/asset/ASA20/025/2005/en>
- 77 See Amnesty International, "Briefing on the Prevention of Terrorism Ordinance", 2001. Accessed from <http://www.amnesty.org/en/library/asset/ASA20/049/2001/en/>
- 78 The Constitution First Amendment Act 1951, the Seventh Amendment Act 1956, Fifteenth Amendment Act 1963, Sixteenth Amendment Act 1963 and Constitution 24th Amendment Act entrench the power of the state to invoke executive powers and extraordinary powers against citizens and target particular sections of Indian society.
- 79 Ray T Smith, "The Role of India's 'Liberals' in the Nationalist Movement, 1915-1947", *Asian Survey*, special issue on "Modernization in South Asian Studies: Essays in a Changing Field", 8:7, July 1968, pp 607-24.
- 80 For e g, Tony Benn, a leading Left intellectual in Britain, writes that while credit is due to the Indians who fought for independence, "It was the internationalism associated with socialism that marked the beginning of the cooperation that made possible a relatively peaceful end to British imperialism". Bill Frank, Crain Horner and David Steward (ed.), Foreword by Tony Benn in *The British Labour Movement and Imperialism* (New Castle upon Tyne: Cambridge Scholars Publishing), 2010 at p x.
- 81 See M J Alpes, "The Congress and the INA Trials, 1945-50: A Contest over the Perception of 'Nationalist' Politics", *Studies in History*, 23:1, 2007, pp 135-58.
- 82 Quoted in Deol; Gurdev Singi, 1967, n 2 at p 199.
- 83 Baba Bujha Singh's year of birth is dated variously as 1888, 1899 or 1903. Regardless he was of advanced age when the extrajudicial killing occurred. For a biography, see Ajmer Sidhu *From Ghadar to Naxalbari: Baba Bujha Singh: An Untold Story* (Barnala, Punjab@ Tarkbharti Prakashan), 2013.
- 84 S T Ray, 1968, n 80.
- 85 Aloys Arthur Michel, *The Indus Rivers: A Study of the Effects of Partition* (New Haven and London: Yale University Press), 1967 at pp 1-2.
- 86 A A Michel, 1967, n 87 at pp 134-94.
- 87 Consideration of the rise of US as a regional power and its role in the geopolitics of south Asia after the implosion of the British Empire is beyond the scope of this article suffice to note that there are other factors in the account of Partition.
- 88 Mark Juergensmeyer, "Gandhi vs Terrorism", *Daedalus*, 136:1, 2007, pp 30-40.
- 89 M Ramnath, 2011, n 6 at pp 189-93; 288 nn 125, 129, 132, 133.
- 90 Quoted in G S Deol, 1969, n 6 at p 192.
- 91 Canada, Australia and New Zealand – the other British colonies – were given dominion status within the Empire but this demand was denied to India prompting perceptions of racial discrimination against Indians. Besant's efforts did not have the desired results therefore.
- 92 The authors of the reform were John Morley, the Liberal Secretary of State for India, and Earl of Minto, the Conservative Governor General of India.
- 93 The Sedition Committee which recommended the law included Diwan Bahadur CV Kumaraswami Sastri, Judge of the High Court of Madras and the Provash Chandra Mitter, Vakil of the High Court of Calcutta. Report of the Sedition Committee 1928, n 6.
- 94 For the views of the educated classes in India on the national situation including their contributions to the debates including the Imperial Council debates on the Rowlatt Bill, see speeches and summaries in H N Mitter (editor) *Punjab Unrest Before & After* (Sibpur, Calcutta: N N Mitter Publishers), 1921.
- 95 H N Mitter, 1921, n 96 at p 9.
- 96 R D'Souza, 2005, n 58. Also see Radha D'Souza, *Interstate Conflicts over Krishna Waters: Law, science and Imperialism* (New Delhi: Orient Longmans), 2006.
- 97 See R D'Souza, 2005, n 58.
- 98 Ibid.
- 99 For how this occurred in environmental and water laws, both state subjects, see R D'Souza, "The Legal Process and Limits of Environmental Legislation In India", International Location of Polluting Industries FIL series, Working Papers No 7, University of Oslo, Norway, 1995, p 102.
- 100 R D'Souza, 2013, n 24.
- 101 For details, see R D'Souza, 2006, n 97.
- 102 Lt Col Gautam Sharma, "Nationalisation of the Indian Army (1885-1947)" (New Delhi: Allied Publishers), 1996 at p 113.
- 103 The leadership of the Congress promised reorganisation of states based on language groups during the independence movement but reneged from the promises after Independence leading to nationwide protest movements for linguistic reorganisations in the 1950s after the Constitution was adopted. The States Reorganisation Act 1956 is a constitutional statute for devolution. Many states had to fight for statehood under the statute. State formation and devolution continued well into the 1960s. See R D'Souza, 2006, n 97.
- 104 E B Pashukanis, *Law & Marxism: A General Theory* (Worcester, Britain: Pluto Press), 1989 [1929].
- 105 R D'Souza, 2012, n 32.